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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 PATRICK CHARLES McKENNA,)

10 Petitioner,)

2:11-cv-00191-JCM-PAL

11 vs.)

ORDER

12 E.K. McDANIEL, *et al.*,)

13 Respondents.)
14 _____/

15 This scheduling order is issued pursuant to Federal Rule of Civil Procedure 16(b), the Rules
16 Governing Section 2254 Cases in the United States District Courts, and Local Rule 16-1.

17 On June 13, 2011, the court held a status conference in this action. Counsel for petitioner
18 and counsel for respondents appeared at the conference. At the conference, counsel addressed the
19 anticipated course of proceedings in this action.

20 **IT IS ORDERED:**

21 1. **Amended Petition.** Petitioner shall have until **September 12, 2011**, to file an
22 amended petition for writ of habeas corpus. The amended petition shall contain all known grounds
23 for relief, both exhausted and unexhausted. The amended petition shall specifically state whether
24 each ground for relief has been exhausted in state court and, for each claim that has been exhausted
25 in state court, the amended petition shall state how, when, and where that occurred. If petitioner
26 determines that an amended petition need not be filed, then, when the amended petition is due,

1 counsel for petitioner shall file a statement to that effect.

2 2. **Response to Petition.** Respondents shall have **sixty (60) days** following
3 service of the amended petition to file and serve an answer or other response to the amended petition.
4 If petitioner does not file an amended petition, respondents shall have **sixty (60) days** following the
5 due-date for the amended petition to file an answer or other response to the original petition.

6 3. **Reply and Response to Reply.** Petitioner shall have **forty-five (45) days**
7 following service of an answer to file and serve a reply. Respondents shall thereafter have
8 **thirty (30) days** following service of a reply to file and serve a response to the reply.

9 4. **Briefing of Motion to Dismiss.** If respondents file a motion to dismiss,
10 petitioner shall have **thirty (30) days** following service of the motion to file and serve an opposition
11 to the motion. Respondents shall thereafter have **thirty (30) days** following service of the
12 opposition to file and serve a reply.

13 5. **Discovery.** If petitioner wishes to move for leave to conduct discovery,
14 petitioner shall file and serve such motion concurrently with, but separate from, the response to
15 respondents' motion to dismiss or the reply to respondents' answer. Any motion for leave to
16 conduct discovery filed by petitioner before that time may be considered premature, and may be
17 denied, without prejudice, on that basis. Respondents shall file and serve a response to any such
18 motion concurrently with, but separate from, their reply in support of their motion to dismiss or their
19 response to petitioner's reply. Thereafter, petitioner shall have twenty (20) days to file and serve a
20 reply in support of the motion for leave to conduct discovery. If the court grants petitioner leave to
21 conduct discovery, the court will then establish time limits for the completion of the authorized
22 discovery.

23 6. **Evidentiary Hearing.** If petitioner wishes to request an evidentiary hearing,
24 petitioner shall file and serve a motion for an evidentiary hearing concurrently with, but separate
25 from, the response to respondents' motion to dismiss or the reply to respondents' answer. Any
26 motion for an evidentiary hearing filed by petitioner before that time may be considered premature,

1 and may be denied, without prejudice, on that basis. The motion for an evidentiary hearing must
2 specifically address why an evidentiary hearing is required, and must meet the requirements of
3 28 U.S.C. § 2254(e). The motion must state whether an evidentiary hearing was held in state court,
4 and, if so, state where the transcript is located in the record. If petitioner files a motion for an
5 evidentiary hearing, respondents shall file and serve a response to that motion concurrently with, but
6 separate from, their reply in support of their motion to dismiss or their response to petitioner's reply.
7 Thereafter, petitioner shall have twenty (20) days to file and serve a reply in support of the motion
8 for an evidentiary hearing.

9 7. **Status Reports and Status Conferences.** The court may from time to time,
10 as the need arises, schedule status conferences, and/or require the filing and service of status reports,
11 in order to manage the progress of this action.

12 DATED: June 13, 2011.

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15 *James C. Mahan*
16 UNITED STATES DISTRICT JUDGE
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